Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. 00-2385

In the Supreme Court of the United States

LAMONT D. HILL,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

LAMONT D. HILL
Petitioner Pro Se

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QUESTION PRESENTED

Has Petitioner's constitutionally guaranteed Fifth Amendment right to a due process right of appeal to a U.S. Circuit Court of Appeals as set out in 28 U.S.C. § 1291 and FRAP Rules 3 and 4 (a) (2) been abrogated by Circuit Court dismissal of his appeal in face of the Lower Court Record showing his appeal to have been perfected when a Judgment was entered on June 16, 2000 in accordance with FRAP Rule 4 (a) (2) and as interpreted in *First Tier Mortgage Co. v. Investors Mortgage Insurance*, (1991) 498 U.S. 269 ?

PARTIES TO THE PROCEEDINGS

The only parties to this proceeding are the Petitioner, Lamont D. Hill, and the United States of America represented by the Office of the United States Attorney.

All other parties in caption of District Court documents are in default.

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JURISDICTIONAL STATEMENT

The Eighth Circuit Court of Appeals MANDATE after the FRAP Rule 41 expiration for seeking a rehearing 45 days from June 22, 2000 expired on August 5, 2000. The MANDATE was entered by the Circuit Court Clerk on August 16, 2000. The MANDATE finalized the June 21, 2000 Judgment which had dismissed the appeal.

28 U.S.C. § 1254 advises:

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case before or after rendition of judgment or decree;

This Supreme Court Rule 13 advises that:

> The time to file a petition for a writ of certiorari runs from date of judgment OR runs from date of denial of petition (whether or not they requested rehearing).

and the Circuit Court MANDATE of August 16, 2000 closed the matter in the Circuit Court, by incorporating and adopting the Judgment of June 21, 2000. The Notification required by Supreme Court Rule 29.4 (b) has been given as per Affidavit of Service.

STATUTES OF THE CASE

28 U.S.C. § 1291 Final Decisions of district courts

> The courts of appeals*** shall have jurisdiction of appeals from all final decisions of the district courts of the United States.

Federal Rules of Appellate Procedure

Rule 3 Appeal as of Right--How Taken

(1) An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within time allowed by Rule 4.

Rule 4 Appeal as of Right--When Taken

(a) Appeal in a Civil Case.

(2) Filing Before Entry of Judgment. A notice of appeal filed after the court announces a decision or order--but before entry of the judgment or order--is treated as filed on the date of and after the entry.

Rule 40A Petition for Rehearing by Panel.

(a) Grounds for Filing. Parties shall not file petitions for rehearing as a matter of course. Rehearing will be granted only if a panel has overlooked or misconstrued a significant issue.

Rule 40 Petition for Panel Rehearing

(a) Time to File * * *

(1) * * * But in a civil case if the United States * * * is a party the time within which *any* party may seek a rehearing is 45 days after entry of judgment * * *

Rule 47A: Summary Disposition

(b) On Motion of Parties. The appellee may file a motion to dismiss a docketed appeal on the ground the appeal is not within the court's jurisdiction. Except for good cause or on the motion of the court, a motion to dismiss based on jurisdiction shall be filed within 15 days after the court has docketed the appeal.

Rule 41. Mandate: Contents; Issuance and Effective Date; Stay

(a) Contents * * *

(b) When issued. The court's mandate must issue 7 days after the time to file a petition for rehearing expires * * *

(c) Effective Date: The mandate is effective when issued.

STATEMENT OF THE CASE

On November 25, 1998 the United States of America, acting for the U.S. Department of Agriculture's Farm Service Agency, filed a Complaint to foreclose certain mortgages. Petitioner was served and appeared in the case with Answer and Affirmative defenses.

On April 5, 2000 the District Court granted a Government Motion for Summary Judgment. Appendix I. The Order granting the Summary Judgment declares, in part, i.e.

. . . "Judgment is entered" . . .

(Appendix N; LC Dkt. No. 78). The declaration caused the Petitioner to seek clarification as to the meaning of "Judgment is entered" and a letter was send to the Clerk with copies to U.S. Attorney inquiring. The Clerk did not enter the letter in the Docket. No response was made to the letter. If a judgment had been entered, FRCP Rule 59 set a 10 day time limit for filing a Rule 59 Motion. Such a Motion was made on April 17, 2000. (Appendix N; LC Dkt. No.'s 82, 83, 84).

No apparent action being taken on the Rule 59 Motion, Petitioner filed a Notice of Appeal from the "Judgement is entered" statement on May 2, 2000, (Appendix N; LC Dkt. No. 86), and the Clerk forwarded same to the Clerk of the Circuit Court on same day. (Appendix N; LC Dkt. No. 86). The District Court now ruled on the Rule 59 Motion. (Appendix N; LC Dkt. No. 86). Petitioner now, still relying on the statement "Judgment is entered", filed an Amended

Notice of Appeal to include the denial of the Rule 59 Motion. Appendix N; (LC Dkt. No. 88).

On May 19, 2000 the District Court filed an Order setting aside the May 4, 2000 Order (Appendix H) and ruled on the Motion "on the merits" declaring:

> No final judgment of foreclosure has yet been entered and the United States Court of Appeals will not consider the appeal until a final judgment has been entered. Pursuant to Rule 4 (a) (2) of the Federal Rules of Appellate Procedure, the notice of appeal will be treated as filed when a final judgment is entered.

(Appendix G).

Petitioner now as of May 19, 2000 knew that the declaration of April 4, 2000, "Judgment is entered" did not mean what it stated. A copy of the Court's Order filed May 19, 2000 was sent by the Clerk to the U.S. Attorney on May 24, 2000. (Appendix N; LC Dkt. No. 90)

On May 23, 2000 the U.S. Attorney filed with the Circuit Court a FRAP Rule 47A (b) Motion to Dismiss the Appeal filed on May 2, 2000 and attached with his Motion a copy of the District Court's May 19, 2000 Order. (Appendix N; LC Dkt. No. 86). The Motion to Dismiss was docketed by the Circuit Court Clerk on June 5, 2000. (Appendix N).

The District Court now rendered Judgment on June 16, 2000. (Appendix N; LC Dkt. No. 92). Copies of the Judgment were mailed to the U.S. Attorney, Clerk of the Circuit Court and to the U.S. Marshal as is shown by LC Dkt. No. 92. (Appendix N).

The Clerk of the Circuit Court now docketed the June 16, 2000 Judgment as shown by Appendix N. (LC Dkt. No. 92). A full Lower Court Record was now before the Circuit Court.

Under date of June 21, 2000 the Clerk of Circuit Court sent Petitioner a document marked JUDGMENT. (Appendix F). It is to be noted that the basis for this Judgment was, i.e.:

> The motion of appellee for dismissal of this appeal is granted on the ground there is not yet a final judgment and the appeal is premature.

Such was not the fact as shown to the Court by the Circuit Court Clerk Docket entry showing a June 16, 2000 District Court Judgment on file. (Appendix N; LC Dkt. No. 92). The District Court and U.S. Attorney were sent copies of the JUDGMENT dismissing the appeal.

Petitioner's FRAP Rule 40 (a)(1) time to seek a Panel Rehearing commenced running on June 22, 2000 with an expiration date of August 5, 2000.

Having been told that the Judgment on file was not entered, Petitioner moved the District Court to grant an amendment to its May 19, 2000 Order so as to afford the 60 day time for filing a Notice of Appeal. (Appendix N; LC Dkt. No. 96). On July 13, 2000 the District Court ruled on the motion. (Appendix N; LC Dkt. No. 100).

It is to be noted that in the July 13, 2000 Order the District Court charged Petitioner with filing a frivolous motion declaring:

> He has already filed a notice of appeal and his appeal is perfected as of the entry of a final judgment in this action.

The Motion to Amend was denied. The District Court declaring:

> . . . The filing of any additional frivolous motions in this action by Hill will result in the imposition of monetary and possibly other sanctions . . .

Having been forbidden to file additional motions, Petitioner noted the Eighth Circuit Court of Appeals Local Rule 40A stating:

> (a) Grounds for Filing. Parties shall not file petitions for rehearing as a matter of course. Rehearing will be granted only if a Panel has overlooked or misconstrued a significant issue.

The Circuit Court Record was before the Panel on June 21, 2000. The Record showed the Government Motion to Dismiss Appeal as "moot" after June 16, 2000. It showed that the Motion was as well "out of time" as per FRAP Rule 47A. It showed no Motion to Dismiss based on FRAP Rule 47A filed within 15 days after the Clerk of the Circuit Court had docketed the June 16, 2000 Judgment on June 19, 2000. The Lower Court Record showed no timely Motion to Dismiss made within 15 days to the May 2, 2000 Notice of Appeal filed in the District Court.

Petitioner could not charge the Panel with overlooking what was clearly before it on June 21, 2000 for such a change

could be deemed frivolous under the District Court admonition and the Circuit Court Rules.

At time of the District Court Order made on July 13, 2000 only 23 days remained to file a Petition for a Panel Rehearing. The U.S. Attorney still had time to ask that the ruling be reversed on basis of the record. As the moving party he had the duty to do so.

Petitioner did not seek a Rehearing for the reasons stated, and awaited the Circuit Court mandate due 7 days from August 5, 2000 as per FRAP Rule 41, or by August 12, 2000.

The mandate was made by the Circuit Court Panel adopting the June 21, 2000 JUDGMENT and stamping same "MANDATE ISSUED." The MANDATE was filed by the Clerk on August 16, 2000. (Appendix A). The District Court Clerk filed the Mandate on August 21, 2000 as is shown by his filing stamp.

On July 7, 2000 the U.S. Marshal filed a Notice of Sale with District Court (Appendix N; LC Dkt. No. 98) setting a sale date of August 17, 2000 and representing that it would be based on a June 16, 2000 Judgment. (Appendix D). Such representation was made just 16 days after the Circuit Court of Appeals Panel had found no Judgment to exist.

Petitioner moved for a stay of the sale under date of August 8, 2000 to the Circuit Court but the motion was returned with the declaration that "No Notice of Appeal had been filed in the District Court concerning the matter" and no stay motion was therefore proper. (Appendix L). The Stay Motion papers were returned notwithstanding the Circuit Court Docket Entries showing to the contrary.

On August 30, 2000 Petitioner filed a FRAP Rule 27A Motion for a Reconsideration or Rehearing on a Request for a recall of the June 21, 2000 Judgment of Dismissal. The Motion was denied without comment on September 8, 2000.

On September 15, 2000 Petitioner filed a FRAP Rule 27B (d) (e) Motion for a Reconsideration of the September 8, 2000 denial of the August 30, 2000 Motion seeking to vacate and modify the June 21, 2000 Judgment of Dismissal of Appeal. Again this Motion was denied as a successive petition. (Appendix J). A Petition for an En banc Rehearing was Rejected. (Appendix K).

FEDERAL JURISDICTION

Federal Jurisdiction in the court of first instance is based on the fact the United States is the Plaintiff in the action and it alleged in same that its jurisdiction was based on 28 U.S.C. § 1345. The action is based on a claim of debt owed by Petitioner to the United States Department of Agriculture's Farmers Home Administration known since October 13, 1994 as Farm Service Agency as per Public Law 103-354.

REASONS FOR GRANTING WRIT

The issue in this case is of exceptional importance. A Circuit Court of Appeals ruling which dismisses an appeal of right in face of an undisputed Lower Court Record showing complete compliance with FRAP Rule 4 (a) (2) is a ruling in total conflict with the Act of Congress making FRAP Rule 4 (a) (2) the law by amendment as of 1979. The ruling is, as well, in total conflict with this Court's decision in *First Tier Mortgage Co. v Investors Mortgage Insurance Co.* (1991) 498 U.S. 269 decided January 15, 1991.

The full record before the Eighth Circuit Court of Appeal's Panel on June 21, 2000 showed an Appeal Notice of record as of May 2, 2000, a defective Motion to Dismiss same filed May 23, 2000, and a District Court Judgment entered on June 16, 2000. Circuit Court jurisdiction ripened as of law on June 16, 2000. The Government Motion to Dismiss became "moot" on June 16, 2000, even if filed on time. No new or amended Motion to Dismiss the Appeal was ever made.

The Lower Court Record clearly showed that the United States District Court Judge considered Petitioner's Notice of Appeal ripe on June 16, 2000, and during rehearing time he declared again his ruling that the . . . "appeal was perfected" . . . .

Finally, the Circuit Court's required mandate to be issued at end of rehearing time was "out of time" in violation of the law and could not operate to deprive Petitioner of his right to seek a Panel Rehearing as he attempted to do after expiration of the 45 day period of time to seek rehearing.

The denial of the "appeal of right" on this record denies Petitioner's Fifth Amendment right to the due process right of circuit court appeal as guaranteed by 28 U.S.C. 1291 and FRAP Rule 4 (a) (2), and as said this Supreme Court's decision on this right.

The U.S. Attorney acting for the Government is an Officer of the Court and was bound by the duty imposed on him as such Officer to alert the Circuit Court after its Judgment dismissing the appeal to the fact that his Motion had no merit and had been "mooted." He overlooked this uncontroverted fact and made no effort to do what his duty required him to do. The U.S. Attorney's continued insistence after knowing of the June 16, 2000 entry of Judgment suggests a resolve to proceed anyway to enforce a District Court Judgment which this Petitioner had a right to have reviewed by the Circuit Court and reversed after review.

CONCLUSION

It should not be necessary for this Court to go forward with a plenary proceeding. The Record shows clearly that the Eighth Circuit Court of Appeals erred in its threshold determination that a Notice of Appeal had never been filed. A Notice was on file as of May 2, 2000 it was premature. The Notice ripened on June 16, 2000 under FRAP Rule 4 (a) (2). Summary Disposition under-this Court's Rule 16 is in order which will reverse the Circuit Court's Judgment dismissing the appeal and ordering same reinstated.

Respectfully submitted,

/s/_____
Lamont D. Hill
Petitioner - Pro Se

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[Filed August 21, 2000]

No. 00-2363SDP

United States of America, *Appellee*,	)
v.	)
Lamont D. Hill, *Appellant*,	)
Janet Thompson; Shield Partnership; Ross Hill; Jody Hill; Kenneth Falkenhagen; Asmussen Grain, Inc.; Robert Joachim, doing business as Joachim Brothers Partnership; Gerald Joachim, doing business as Joachim Brothers Partnership; Pioneer Hi-Breed International, Inc.; Barber Farm Service; Keltgen Seed Company;	)

Aberdeen Association of)
Orthopedic Surgeons;)
Sully County, a political)
subdivision of the State of)
South Dakota,)
Defendants.)
----------)
Larry Dean Nelson,)
Receiver.)
)

Appeal from the United States District Court
for the District of South Dakota

JUDGMENT

The motion of appellee for dismissal of this appeal is granted on the ground there is not yet a final judgment and the appeal is premature.

The appeal is hereby dismissed. See Eighth Circuit Rule 47A(b).

(5361-010199)

June 21, 2000

A true copy.

ATTEST: /s/ Michael E. Gans
CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

MANDATE ISSUED 8/16/00

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[Filed June 21, 2000]

No. 00-2363SDP

United States of America, *Appellee*,

v.

Lamont D. Hill, *Appellant*,

Janet Thompson; Shield Partnership; Ross Hill; Jody Hill; Kenneth Falkenhagen; Asmussen Grain, Inc.; Robert Joachim, doing business as Joachim Brothers Partnership; Gerald Joachim, doing business as Joachim Brothers Partnership; Pioneer

Hi-Breed International, Inc.; Barber Farm Service;

Keltgen Seed Company;)
Aberdeen Association of)
Orthopedic Surgeons;)
Sully County, a political)
subdivision of the State of)
South Dakota,)
Defendants.)
----------)
Larry Dean Nelson,)
Receiver.)
)

Appeal from the United States District Court
for the District of South Dakota

JUDGMENT

The motion of appellee for dismissal of this appeal is granted on the ground there is not yet a final judgment and the appeal is premature.

The appeal is hereby dismissed. See Eighth Circuit Rule 47A(b).

(5361-010199)

June 21, 2000

A true copy.

ATTEST: Michael E. Gans
CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
U.S. COURT & CUSTOM HOUSE
1114 MARKET STREET
ST. LOUIS, MISSOURI 63101

MICHAEL E. GANS
Clerk of Court

VOICE (314) 244-2400
ABBS (800) 652-8671
www.ca8.uscourts.gov

June 21, 2000

Mr. Lamont D. Hill
18147 320th Avenue
Onida, SD 57564

Re: 00-2363 United States vs. Lamont D. Hill

Dear Mr. Hill:

Enclosed is a copy of the dispositive order entered today in the referenced case.

Please review Federal Rules of Appellate Procedure and the Eighth Circuit Rules on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing must be received by the clerk's office within the time set by FRAP 40 in cases where the United States or an officer or agency thereof is a party (within 45 days of entry of judgment). Petitions for rehearing are not afforded a grace period for mailing and are subject to being denied if not timely received.

(5009-010199)

Sincerely,
/s/
Michael E. Gans
Clerk of Court

dms
Enclosure(s)

cc: Hon. Charles B. Kornmann, U.S. District Judge
Jan Leslie Holmgren
Joseph A. Haas, Clerk

District Court/Agency Case Number(s): CIV 98-3024

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

[Filed July 14, 2000]

CIV. 98-3024

UNITED STATES OF AMERICA,
Plaintiff,

v.

LAMONT D. HILL; JANET THOMPSON; SHIELD PARTNERSHIP; ROSS HILL; JODY HILL; KENNETH FALKENHAGEN; ASMUSSEN GRAIN, INC.; ROBERT JOACHIM and GERALD JOACHIM, d/b/a Joachim Brothers Partnership; PIONEER HI-BREED INTERNATIONAL, INC.; BARBER FARM SERVICE; KELTGEN

SEED COMPANY; ABERDEEN ASSOCIATION OF ORTHOPEDIC SURGEONS; SULLY COUNTY, a political subdivision of the State of South Dakota,

Defendants.

ORDER

Defendant Hill has filed yet another motion (Doc. 96) that is frivolous. He has already filed a notice of appeal and his appeal is perfected as of the entry of a final judgment in this action. The motion should be denied. Now, therefore,

IT IS HEREBY ORDERED:

1. Defendant Hill's motion (Doc. 96) should be and the same is hereby denied.

2. The filing of any additional frivolous motions in this action by Hill will result in the imposition of monetary and possibly other sanctions.

Dated this 13th day of July, 2000.

BY THE COURT:

/s/_____
CHARLES B. KORNMANN
United States District Judge
ATTEST:

JOSEPH HAAS, CLERK
BY: /s/_____
DEPUTY (SEAL)

APPENDIX D

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

[Filed July 5, 2000]

CIV. 98-3024

UNITED STATES OF AMERICA, *Plaintiff*,	)
v.	)
LAMONT D. HILL; JANET THOMPSON; SHIELD PARTNERSHIP; ROSS HILL; JODY HILL; KENNETH FALKENHAGEN; ASMUSSEN GRAIN, INC.; ROBERT JOACHIM and GERALD JOACHIM, d/b/a Joachim Brothers Partnership; PIONEER HI-BREED INTERNATIONAL, INC.; BARBER FARM SERVICE; KELTGEN	)

SEED COMPANY; ABERDEEN ASSOCIATION OF ORTHOPEDIC SURGEONS; SULLY COUNTY, a political subdivision of the State of South Dakota,

Defendants.

NOTICE OF SALE

Notice is hereby given pursuant to a Judgment and Decree of Foreclosure Sale entered by the U.S. District Court, District of South Dakota, Northern Division, on June 16, 2000, in the above-entitled action there is now owed to plaintiff United States of America, the amount of $2,239,896.34, plus interest from the date of Judgment at the rate of 6.375% computed daily and compounded annually until paid in full plus additional costs necessarily incurred in enforcing the Judgment.

The property to be sold is described as:

Section 7 :	All
Section 8 :	South Half (S1/2)
Section 17:	Northeast Quarter (NE1/4)
Section 18:	All
Section 20:	All
Section 21:	Southeast Quarter (SE1/4)
Section 22:	West Half (W1/2); Southeast

Quarter (SE1/4); South Half of the Northeast Quarter (S1/2 NE1/4)

Section 27: Northwest Quarter (NW1/4)

Section 29: All

Township 115 North, Range 74 West of the 5th P.M., Sully County, South Dakota.

subject to all valid outstanding easements, rights-of-way, mineral leases, mineral reservations, and mineral conveyances of record.

I will sell the above-described property to the highest bidder or bidders at public auction at the front door of the Sully County Courthouse in Onida, South Dakota, on August 17, 2000, commencing at 1 p.m.

The real estate shall be sold to the highest bidder at public auction in the nine separate tracts described above, or a combination of tracts, whichever brings the greatest sale price. The improvements shall be sold as a part of the real estate and not severally.

The United States may bid the fair and reasonable value of the above described property, minus the sum of any balances due on the date of sale on any prior liens or encumbrances, including, but not limited to, outstanding (due and payable) real estate taxes.

Approximately ten days after the sale, the purchaser shall receive a Certificate of Sale executed and acknowledged which will be recorded in the Office of the Register of Deeds. No period of redemption shall be allowed.

TERMS: All bidders except the United States of America, cash, on day of sale. Personal or corporate check will be accepted with a letter of credit or guarantee (subject to verification) from the bank upon which check is drawn.

The purchaser is responsible for all past unpaid and current payable real estate taxes. Prospective purchasers should direct legal questions to their own attorney prior to the date of the sale.

For further information regarding this property, contact Gary Jackson, FSA Farm Loan Manager, Pierre, SD at (605)224-8870.

Dated this 5th day of July, 2000.

LYLE W. SWENSON
United States Marshal
/s/_____

APPENDIX E

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

[Filed June 20, 2000]

CIV. 98-3024

UNITED STATES OF AMERICA, *Plaintiff*,	)
v.	)
LAMONT D. HILL; JANET THOMPSON; SHIELD PARTNERSHIP; ROSS HILL; JODY HILL; KENNETH FALKENHAGEN; ASMUSSEN GRAIN, INC.; ROBERT JOACHIM and GERALD JOACHIM, d/b/a Joachim Brothers Partnership; PIONEER HI-BREED INTERNATIONAL, INC.; BARBER FARM SERVICE; KELTGEN	)

SEED COMPANY; ABERDEEN ASSOCIATION OF ORTHOPEDIC SURGEONS; SULLY COUNTY, a political subdivision of the State of South Dakota,

Defendants.

AMENDED JUDGMENT OF FORECLOSURE AND DECREE OF SALE

The Court has entered an order granting summary judgment (Doc. 78) and a judgment of foreclosure and decree of sale (Doc. 92). The Court has jurisdiction over the parties and over the subject matter. Plaintiff has, in accordance with the directives of the court, obtained and filed a recent appraisal. Such appraisal shows the current fair market value of the real estate at $1,046,500.00, a $121,000.00 decrease from the earlier appraisal showing a value of $1,167,500.00. Plaintiff has also provided notice that it does not intend to bid more than the fair market value of the real estate. It is now appropriate to enter a final amended judgment of foreclosure and decree of sale.

IT IS HEREBY ORDERED:

1. Plaintiff's motion for summary judgment (Doc. 60) is granted, there being no genuine issue as to any material fact and plaintiff being entitled to judgment as a matter of law.

2. Judgment of foreclosure is entered against the real property hereinafter described.

3. The debt of Lamont D. Hill to plaintiff is in the amount of $1,166, 919.78 in principal plus $1,068,600.26 in interest through May 19, 2000, plus daily interest thereafter at the rate of $156.2963 from and after May 19, 2000, plus any costs taxed. Interest after judgment will continue to accrue at the legal rate pursuant to 28 U.S.C. § 1961 (a).

4. The United States Marshal or his deputy shall sell the mortgaged property as provided by law, without the right of redemption, and apply the proceeds as follows: (a) to the costs and expenses of sale, (b) to the payment of the costs and disbursements taxed in this action, (c) to payment on the debt ($2,235,520.04 plus daily interest at the rate of $156.2963 from May 19, 2000, to the date of filing of this amended judgment) adjudged by the Court to be due, and (d) pay the surplus, if any, into court for the use of defendant Hill or the person or persons entitled thereto, subject to further order of the court to determine the lien priority of the defendants (other than Hill) and of other agencies of the United States Government.

5. All lien rights and interests of the parties to this action are inferior to the real estate mortgages of plaintiff except Sully County. Sully County's tax lien is in the amount of $98,309.07 principal, plus interest as provided by law and costs of advertising, plus any additional interest and advertising costs in connection with the real estate taxes for 1999. The property shall be sold subject to the buyer or buyers paying the taxes for 2000 due in 2001.

6. All defendants other than Sully County as to real estate taxes, together with each and every person or entity claiming under them or any of them claiming any lien or encumbrance of any kind or character upon or against the real property hereinafter described, subsequent in time or in priority, or both, to the liens of the plaintiff's real estate mortgages, and all persons claiming to acquire any right, title, or interest in and to said property or any part thereof subsequent to the filing in the office of the Register of Deeds for Sully County, South Dakota, of the notice of lis pendens, are barred and foreclosed of and from all rights, title or interest in and to said property hereafter described.

7. Plaintiff is awarded the costs and disbursements of this action in the amount of $170.00.

8. The fair and reasonable value of the mortgaged premises is $1,046,500.00, this being based on the appraisal of April 26, 2000. Plaintiff shall be allowed to bid the fair and reasonable value of the mortgaged premises, less the sum of the balances due, as of the date of sale, on any prior liens or encumbrances upon the mortgaged premises, including liens or charges for real property taxes and special assessments, but in no event need bid a sum in excess of the debt adjudged by the Court to be due, with costs and disbursements taxed in the action in which the sale is made, and costs and expenses of the sale.

9. It appearing to the Court that the real estate can be sold in parcels without injury to the interests of the parties, the Court directs that so much of the mortgaged premises shall be sold as will be sufficient to pay the amounts then due plaintiff, with costs. The parcels of real estate, all in Township 115 North, Range 74 West of the 5th P.M., Sully County, South Dakota, subject to all valid outstanding

easements, rights-of-way, mineral leases, mineral reservations, and mineral conveyances of record, and subject to real estate taxes and interest in connection with tax year 2000, shall be offered in the following order:

Section 7:	All
Section 8:	South Half (S1/2)
Section 17:	Northeast Quarter (NE1/4)
Section 18:	All
Section 20:	All
Section 21:	Southeast Quarter (SE1/4)
Section 22:	West Half (W1/2); Southeast Quarter (SE1/4); South Half of the Northeast Quarter (S1/2 NEl/4)
Section 27:	Northwest Quarter (NW 1/4)
Section 29:	All

If there is no bid made for any parcel or parcels offered, such parcel or parcels may be sold with any other parcel not then sold as one parcel.

10. After advertising the property for sale in the manner provided by law, the United States Marshals Service shall sell the property in the manner provided by law. The plaintiff shall then seek an Order Confirming Sale and, if the sale is confirmed, the United States Marshals Service shall forthwith execute and deliver a deed to the purchaser or purchasers.

11. Plaintiff shall have, by way of further relief, a personal judgment against Lamont D. Hill for any sums due it from him pursuant to this judgment which remain unsatisfied after the sale of the subject premises. If the proceeds are insufficient, plaintiff shall present to the Court

a proposed deficiency judgment. No personal judgment is awarded against any other defendant.

12. Defendant Hill has no right of redemption, having waived the same which waiver is binding upon him. The sale shall therefore be conducted without any right of redemption.

13. Neither Lamont D. Hill nor any other person now in possession or claiming to be in possession of the described property or claiming to have any leasehold interest shall in any way hinder or interfere with the U.S. Marshals Service in selling the property or in any way hinder or interfere with the right of the purchaser or purchasers at the foreclosure sale from taking immediate possession of the described premises. The U.S. Marshals Service shall announce the provision of this paragraph at the sale.

Dated this 20th day of June, 2000.

BY THE COURT:

/s/_____
CHARLES B. KORNMANN
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK
BY: /s/_____
DEPUTY (SEAL)

APPENDIX F

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

[Filed June 20, 2000]

CIV. 98-3024

UNITED STATES OF AMERICA, *Plaintiff*,	)
v.	)
LAMONT D. HILL; JANET THOMPSON; SHIELD PARTNERSHIP; ROSS HILL; JODY HILL; KENNETH FALKENHAGEN; ASMUSSEN GRAIN, INC.; ROBERT JOACHIM and GERALD JOACHIM, d/b/a Joachim Brothers Partnership; PIONEER HI-BREED INTERNATIONAL, INC.; BARBER FARM SERVICE; KELTGEN	)

SEED COMPANY; ABERDEEN ASSOCIATION OF ORTHOPEDIC SURGEONS; SULLY COUNTY, a political subdivision of the State of South Dakota,

Defendants.

JUDGMENT OF FORECLOSURE AND DECREE OF SALE

The Court has entered an order granting summary judgment (Doc. 78). Plaintiff has, in accordance with the directives of the court, obtained and filed a recent appraisal (Doc. 91). Such appraisal shows the current fair market value of the real estate at $1,046,500.00, a $121,000.00 decrease from the earlier appraisal showing a value of $1,167,500.00. Plaintiff has also provided notice that it does not intend to bid more than the fair market value of the real estate. It is now appropriate to enter a final amended judgment of foreclosure and decree of sale.

IT IS HEREBY ORDERED:

1. Plaintiff's motion for summary judgment (Doc. 60) is granted, there being no genuine issue as to any material fact and plaintiff being entitled to judgment as a matter of law.

2. Judgment of foreclosure is entered against the real property hereinafter described.

3. The debt of Lamont D. Hill to plaintiff is in the amount of $1,166, 919.78 in principal plus $1,068,600.26 in interest through May 19, 2000, plus daily interest thereafter at the rate of $156.2963 from and after May 19, 2000, plus any costs taxed. Interest after judgment will continue to accrue at the legal rate pursuant to 28 U.S.C. § 1961 (a).

4. The United States Marshal or his deputy shall sell the mortgaged property as provided by law, without the right of redemption, and apply the proceeds as follows: (a) to the costs and expenses of sale, (b) to the payment of the costs and disbursements taxed in this action, (c) to payment on the debt ($2,235,520.04 plus daily interest at the rate of $156.2963 from May 19, 2000, to the date sale) adjudged by the Court to be due, and (d) pay the surplus, if any, into court for the use of defendant Hill or the person or persons entitled thereto, subject to further order of the court to determine the lien priority of the defendants (other than Hill) and of other agencies of the United States Government.

5. All lien rights and interests of the parties to this action are inferior to the real estate mortgages of plaintiff except Sully County. Sully County's tax lien is in the amount of $98,309.07 principal, plus interest as provided by law and costs of advertising, plus any additional interest and advertising costs in connection with the real estate taxes for 1999. The property shall be sold subject to the buyer or buyers paying the taxes for 2000 due in 2001.

6. All defendants other than Sully County as to real estate taxes, together with each and every person or entity claiming under them or any of them claiming any lien or encumbrance of any kind or character upon or against the real property hereinafter described, subsequent in time or in priority, or both, to the liens of the plaintiff's real estate

mortgages, and all persons claiming to acquire any right, title, or interest in and to said property or any part thereof subsequent to the filing in the office of the Register of Deeds for Sully County, South Dakota, of the notice of lis pendens, are barred and foreclosed of and from all rights, title or interest in and to said property hereafter described.

7. Plaintiff is awarded the costs and disbursements of this action in the amount of $170.00.

8. The fair and reasonable value of the mortgaged premises is $1,046,500.00, this being based on the appraisal of April 26, 2000. Plaintiff shall be allowed to bid the fair and reasonable value of the mortgaged premises, less the sum of the balances due, as of the date of sale, on any prior liens or encumbrances upon the mortgaged premises, including liens or charges for real property taxes and special assessments, but in no event need bid a sum in excess of the debt adjudged by the Court to be due, with costs and disbursements taxed in the action in which the sale is made, and costs and expenses of the sale.

9. It appearing to the Court that the real estate can be sold in parcels without injury to the interests of the parties, the Court directs that so much of the mortgaged premises shall be sold as will be sufficient to pay the amounts then due plaintiff, with costs. The parcels of real estate, all in Township 115 North, Range 74 West of the 5th P.M., Sully County, South Dakota, subject to all valid outstanding easements, rights-of-way, mineral leases, mineral reservations, and mineral conveyances of record, and subject to real estate taxes and interest in connection with tax year 2000, shall be offered in the following order:

Section 7:	All
Section 8:	South Half (S 1/2)
Section 17:	Northeast Quarter (NE 1/4)
Section 18:	All
Section 20:	All
Section 21:	Southeast Quarter (SE 1/4)
Section 22:	West Half (W 1/2); Southeast Quarter (SE 1/4); South Half of the Northeast Quarter (S 1/2 NE 1/4)
Section 27:	Northwest Quarter (NW 1/4)
Section 29:	All

If there is no bid made for any parcel or parcels offered, such parcel or parcels may be sold with any other parcel not then sold as one parcel.

10. After advertising the property for sale in the manner provided by law, the United States Marshals Service shall sell the property in the manner provided by law. The plaintiff shall then seek an Order Confirming Sale and, if the sale is confirmed, the United States Marshals Service shall forthwith execute and deliver a deed to the purchaser or purchasers.

11. Plaintiff shall have, by way of further relief, a personal judgment against Lamont D. Hill for any sums due it from him pursuant to this judgment which remain unsatisfied after the sale of the subject premises. If the proceeds are insufficient, plaintiff shall present to the Court a proposed deficiency judgment. No personal judgment is awarded against any other defendant.

12. Defendant Hill has no right of redemption, having waived the same which waiver is

binding upon him. The sale shall therefore be conducted without any right of redemption.

13. Neither Lamont D. Hill nor any other person now in possession or claiming to be in possession of the described property or claiming to have any leasehold interest shall in any way hinder or interfere with the U.S. Marshals Service in selling the property or in any way hinder or interfere with the right of the purchaser or purchasers at the foreclosure sale from taking immediate possession of the described premises. The U.S. Marshals Service shall announce the provision of this paragraph at the sale.

Dated this 20th day of June, 2000.

BY THE COURT:

/s/ _____
CHARLES B. KORNMANN
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK
BY: /s/ _____
DEPUTY (SEAL)

APPENDIX G

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

[Filed May 15, 2000]

CIV. 98-3024

UNITED STATES OF AMERICA, *Plaintiff*,	)
v.	)
LAMONT D. HILL; JANET THOMPSON; SHIELD PARTNERSHIP; ROSS HILL; JODY HILL; KENNETH FALKENHAGEN; ASMUSSEN GRAIN, INC.; ROBERT JOACHIM and GERALD JOACHIM, d/b/a Joachim Brothers Partnership; PIONEER HI-BREED INTERNATIONAL, INC.; BARBER FARM SERVICE; KELTGEN	)

SEED COMPANY; ABERDEEN ASSOCIATION OF ORTHOPEDIC SURGEONS; SULLY COUNTY, a political subdivision of the State of South Dakota,

Defendants.

ORDER

Defendant Hill filed a "motion . . . to open judgment & amend findings of fact and conclusions of law Rule 59 (a) and direct entry of new judgment" (Doc. 82). Hill later filed a notice of appeal (Doc. 86), claiming a final judgment of foreclosure had been entered. The Court then entered an Order (Doc. 87) denying the Hill motion as being moot in light of his having filed a notice of appeal. The Court erred in denying the Hill motion on such basis. No final judgment of foreclosure has yet been entered and the United States Court of Appeals will not consider the appeal until a final judgment has been entered. Pursuant to Rule 4 (a)(2) of the Federal Rules of Appellate Procedure, the notice of appeal will be treated as filed when a final judgment is entered.

It is appropriate to consider the Hill motion on the merits. Hill seeks to stay all proceedings in this mortgage foreclosure action. He makes no offer to provide any security to the United States. He has stalled for years this action and efforts by the United States to either be paid for debts due or to foreclose the real estate. He continues to seek to stall and the Court will not permit this. Hill seeks equity with unclean

hands. Regardless of what is happening with regard to Hill's claimed civil rights complaint, this matter should proceed to judgment and the Hill motion should be denied.

Counsel for the United States should promptly submit the recent appraisal obtained on the real property. The Court will then approve it or order a further appraisal. The United States is directed to submit a proposed Judgment and Decree of Foreclosure and Order of Sale, leaving a blank for the appraisal figure.

IT IS HEREBY ORDERED:

1. The Order (Doc. 87) dated May 3, 2000, is hereby set aside.

2. The Hill motion (Doc 82) is denied on the merits.

2. The United States is directed to submit the recent appraisal and a proposed judgment as described above.

Dated this 18 day of May, 2000.

BY THE COURT:

/s/_____
CHARLES B. KORNMANN
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK
BY: /s/_____
DEPUTY (SEAL)

APPENDIX H

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

[Filed May 4, 2000]

CIV. 98-3024

UNITED STATES OF AMERICA, *Plaintiff*,	)
v.	)
LAMONT D. HILL; JANET THOMPSON; SHIELD PARTNERSHIP; ROSS HILL; JODY HILL; KENNETH FALKENHAGEN; ASMUSSEN GRAIN, INC.; ROBERT JOACHIM and GERALD JOACHIM, d/b/a Joachim Brothers Partnership; PIONEER HI-BREED INTERNATIONAL, INC.; BARBER FARM SERVICE; KELTGEN	)

SEED COMPANY;)
ABERDEEN)
ASSOCIATION OF)
ORTHOPEDIC)
SURGEONS; SULLY)
COUNTY, a political)
subdivision of the State of)
South Dakota,)
Defendants.)
)

ORDER

Defendant Hill filed a motion to open judgment and amend findings of fact and conclusion of law and to direct entry of a new judgment, Doc. 82. Defendant subsequently filed a notice of appeal.

Now, therefore,

IT IS ORDERED that defendant's motion, Doc. 82, is denied as moot.

Dated this 3rd day of May, 2000.

BY THE COURT:

/s/_____
CHARLES B. KORNMANN
U.S. District Judge

ATTEST:
JOSEPH HASS, CLERK

APPENDIX I

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

[Filed April 5, 2000]

CIV. 98-3024

UNITED STATES OF AMERICA, *Plaintiff,*	)
v.	)
LAMONT D. HILL; JANET THOMPSON; SHIELD PARTNERSHIP; ROSS HILL; JODY HILL; KENNETH FALKENHAGEN; ASMUSSEN GRAIN, INC.; ROBERT JOACHIM and GERALD JOACHIM, d/b/a Joachim Brothers Partnership; PIONEER HI-BREED INTERNATIONAL, INC.; BARBER FARM SERVICE; KELTGEN	)

SEED COMPANY;)
ABERDEEN)
ASSOCIATION OF)
ORTHOPEDIC)
SURGEONS; SULLY)
COUNTY, a political)
subdivision of the State of)
South Dakota,)
Defendants.)
)

ORDER GRANTING SUMMARY JUDGMENT

BACKGROUND

This is a mortgage foreclosure action. Defendant Hill ("Hill") obtained $520,000.00 from plaintiff and issued and delivered three promissory notes as evidence of his promise to repay such amount plus interest. To secure the notes, two mortgages were signed and delivered by Hill to the United States Department of Agriculture, Farm Services Agency (FSA), formerly Farmers Home Administration (FmHA), in 1977 and 1979. Such mortgages have at all times relevant been a matter of public record. As of October 25, 1999, Hill owes plaintiff $2,203,323.00, which amount includes unpaid principal, interest, and advances. Plaintiff has acted in accordance with the terms of the notes and mortgages in declaring the entire unpaid principal sums, plus interest and recoverable advances and costs, to be immediately due and payable. The property securing the promissory notes had a fair

***

[page 7] no possibility of this case being stayed. Again, Hill has failed to establish a genuine issue of material fact and

summary judgment for the plaintiff should be granted. Now, therefore,

IT IS HEREBY ORDERED:

1. Plaintiff's motion for summary judgment (Doc. 60) is granted, there being no genuine issue as to any material fact and plaintiff being entitled to judgment as a matter of law.

2. Judgment of foreclosure is entered against the real property hereinafter described.

3. The debt of Lamont D. Hill to plaintiff is in the amount of $2, 203,323.00, as of October 25, 1999, plus daily interest thereafter at the rate of $156.2963 from and after October 25, 1999.

4. The United States Marshal or his deputy shall sell the mortgaged property as provided by law, without the fight of redemption, and apply the proceeds as follows: (a) to the costs and expenses of sale, (b) to the payment of the costs and disbursements taxed in this action, (c) to payment on the debt ($2,203,323.00 plus daily interest at the rate of $156.2963 from October 26, 1999, to date of sale) adjudged by the Court to be due, and (d) pay the surplus, if any, into court for the use of defendant Hill or the person or persons entitled thereto, subject to further order of the court to determine the lien priority of the defendants (other than Hill) and of other agencies of the United States government.

5. All lien rights and interests of the parties to this action are inferior to the real estate mortgages of plaintiff except Sully County. Sully County's tax lien is in the amount of $98,309.07 principal, plus interest as provided by law and costs of advertising, plus any additional taxes, interest and

advertising costs in connection with real estate taxes for 1999. The property shall be sold subject to the buyer or buyers paying the taxes for 2000 due in 2001.

6. All defendants other than Sully County as to real estate taxes, together with each and every person or entity claiming under them or any of them or claiming any lien or encumbrance of any kind or character upon or against the real property hereinafter described, subsequent in time or in priority, or both, to the liens of the plaintiff's real estate mortgages, and all persons claiming to acquire any right, title, or interest in and to said real property or any part thereof subsequent to the filing in the office of the Register of Deeds for Sully County, South Dakota, of the notice of lis pendens, are barred and foreclosed of and from all rights, title or interest in and to said property hereafter described.

***

[page 9] the Northeast Quarter (S1/2 NE1/4)
Section 27: Northwest Quarter (NW1/4)
Section 29: All

If there is no bid made for any parcel or parcels offered, such parcel or parcels may be sold with any other parcel not then sold as one parcel.

11. Plaintiff shall have, by way of further relief, a personal judgment against Lamont D. Hill for any sums due it from him which remain unsatisfied after the sale of the subject premises. No personal judgment is awarded against any other defendant.

12. No person now in possession or claiming to be

in possession of the described property or claiming to have any leasehold interest shall in any way hinder or interfere with the U.S. Marshals Service in selling the property or in any way hinder or interfere with the right of the purchaser or purchasers at the foreclosure sale from taking immediate possession of the described premises. The U.S. Marshals Service shall announce the provisions of this paragraph at the sale.

Dated this 4th day of April, 2000.

BY THE COURT:

/s/_____
CHARLES B. KORNMANN
United States District Judge

ATTEST:
JOSEPH HASS, CLERK
BY: /s/_____
DEPUTY · (SEAL)

APPENDIX J

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[Filed September 26, 2000]

00-2363SDP

UNITED STATES OF AMERICA, *Appellee*,	)
v.	)
LAMONT D. HILL; United States of America, *Appellant*.	)

Appeal from the United States District Court
for the District of South Dakota

Appellant's successive motion for reconsideration has been considered by the Court and is denied.

The Court will accept no more attempted filings by Mr. Hill with respect to this particular appeal.

September 26, 2000

Order Entered at the Direction of the Court:

/s/ Michael E. Gans
Clerk, U.S. Court of Appeals, Eighth Circuit

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
THOMAS F. EAGLETON COURT HOUSE
ROOM 24.329
111 S. 10TH STREET
ST. LOUIS, MISSOURI 63102

MICHAEL E. GANS
Clerk of Court

VOICE (314) 244-2400
ABBS (800) 652-8671
www.ca8.uscourts.gov

September 26, 2000

Mr. Lamont D. Hill
18147 320th Avenue
Onida, SD 57564

Re: 00-2363 United States vs. Lamont D. Hill

Dear Mr. Hill:

Enclosed is a copy of an order entered today in the above case at the direction of the court.

(5009-010199)

Sincerely,
/s/
Michael E. Gans
Clerk of Court

dms
Enclosure(s)

cc: Hon. Charles B. Kornmann, U.S. District Judge
Jan Leslie Holmgren
Joseph A. Haas, Clerk

District Court/Agency Case Number(s): CIV 98-3024

APPENDIX K

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
THOMAS F. EAGLETON COURT HOUSE
ROOM 24.329
111 S. 10TH STREET
ST. LOUIS, MISSOURI 63102

MICHAEL E. GANS
Clerk of Court

VOICE (314) 244-2400
ABBS (800) 652-8671
www.ca8.uscourts.gov

October 18, 2000

Mr. Lamont D. Hill
18147 320th Avenue
Onida, SD 57564

Re: 00-2363 United States vs. Lamont D. Hill

Dear Mr. Hill:

We have received your petition for hearing en banc. It is being returned to you because (1) it is untimely and (2) the court directed that no more attempted filings with respect to this appeal will be accepted (see enclosed court order of September 26, 2000).

Sincerely,
/s/
Michael E. Gans
Clerk of Court

dms
Enclosure(s)

District Court/Agency Case Number(s): CIV 98-3024

APPENDIX L

United States Court of Appeals
For the Eighth Circuit
U.S. Court & Custom House
1114 Market Street
St. Louis, Missouri 63101

Michael E. Gans
Clerk of Court

VOICE (314) 539-3600
ABBS (800) 652-8671

August 8, 2000

Lamont D. Hill
18147 320th Avenue
Onida, SD 57564

Re: Motion for an Order Granting a Temporary Stay

Dear Mr. Hill:

We have received your "motion for an order granting a temporary stay under FRAP 27B(b)(5)." We are returning the motion to you, as there has not been a notice of appeal filed in the district court concerning this matter. After you have filed a notice of appeal in district court, you may wish to renew the motion for a stay and file it in our St. Paul office:

United States Court of Appeals
Clerk's Office
500 WEB Federal Building

316 North Robert Street
St. Paul, MN 55101-1423

By copy of this letter, we are also returning the government's response to the Assistant United States Attorney.

Sincerely,

/s/
Robin J. Weinberger
Chief Deputy Clerk

cc: Jan L. Holmgren
Assistant United States Attorney

APPENDIX M

CONSTITUTIONAL PROVISION

Article Amending the U.S. Constitution

Article V

No person shall . . . . be deprived of . . . . property, without due process of law; . . . .

APPENDIX N

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Docket Sheet for 3:98-CV-3024 US District Court, District of South Dakota

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, -vs.-	CIV. 98-3024
LAMONT D. HILL; JANET THOMPSON; SHIELD PARTNERSHIP; ROSS HILL; JODY HILL; KENNETH FALKENHAGEN; ASMUSSEN GRAIN, INC.; ROBERT JOACHIM and GERALD JOACHIM, d/b/a Joachim Brothers Partnership; PIONEER HI-BREED INTERNATIONAL, INC.; BARBER FARM SERVICE; KELTGEN SEED COMPANY; ABERDEEN ASSOCIATION OF ORTHOPEDIC SURGEONS; SULLY COUNTY, a political subdivision of the State of South Dakota, Defendants.	

Appendix Item No.
U.S. Supreme Court
Petition for a Writ of
Certiorari to 8 CCA
File No._____

BEST AVAILABLE COPY

Docket Sheet for 3:98-CV-3024 US District Court, District of South Dakota

05/16/2000	--	No	TRANSMITTING Amended Notice of Appeal to 8th Circuit COA [Date Entered: 05/16/00, By: sn]
05/16/2000	88	Yes: 2 Page(s); 48 KB;	AMENDED NOTICE OF APPEAL by defendant Lamont D. Hill from [78-1]. Appeal fee pd (cc: all counsel) [Date Entered: 05/16/00, By: sn]
05/04/2000	87	Yes: 1 Page(s); 26 KB;	ORDER by Charles B. Kornmann denying motion to open judgment and amend findings of facts and conclusions of law Rule 59(a) and direct entry of new judgment [82-1] (cc:all counsel) [Date Entered: 05/04/00, By: jH]
05/02/2000	--	No	TRANSMITTING Notice of Appeal to 8th Circuit COA [Date Entered: 05/02/00, By: jH]
05/02/2000	86	Yes: 1 Page(s); 30 KB;	NOTICE OF APPEAL by defendant Lamont D. Hill from [78-1] , Appeal fee pd (cc: all counsel) [Date Entered: 05/02/00, By: jH]
04/19/2000	85	Yes: 1 Page(s); 18 KB;	CERTIFICATE OF SERVICE by plaintiff USA [Date Entered: 04/19/00, By: kh]
04/17/2000	84	Yes: 10 Page(s); 413 KB;	AFFIDAVIT of Lamont D. Hill in support of Rule 59 motion [82-1] [Date Entered: 04/17/00, By: dm]
04/17/2000	83	Yes: 4 Page(s); 111 KB;	BRIEF AND ARGUMENT by defendant Lamont D. Hill in support of motion to open judgment and amend findings of facts and conclusions of law Rule 59(a) and direct entry of new judgment [82-1] [Date Entered: 04/17/00, By: dm]
04/17/2000	82	Yes: 7 Page(s); 193 KB;	MOTION of Defendant to open judgment and amend findings of facts and conclusions of law Rule 59(a) and direct entry of new judgment by defendant Lamont D. Hill [Date Entered: 04/17/00, By: dm]
04/14/2000	81	Yes: 1 Page(s); 19 KB;	TAXATION OF COSTS for plaintiff USA in the amount of $ 170.00 against defendant Lamont D. Hill (cc: all counsel) [Date Entered: 04/17/00, By: dm]
04/11/2000	80	Yes: 2 Page(s); 29 KB;	BILL OF COSTS submitted by plaintiff USA [Date Entered: 04/12/00, By: jH]
04/11/2000	79	Yes: 2 Page(s); 28 KB;	STATEMENT of Assistant U.S. Attorney Jan L. Holmgrem [Date Entered: 04/12/00, By: jH]
04/05/2000	78	Yes: 9 Page(s); 495 KB;	ORDER by Charles B. Kornmann granting motion for summary judgment [60-1] (cc:all counsel) [Date Entered: 04/05/00, By: jH]

07/10/2000	99	Yes: 1 Page(s): 20 KB; F	CERTIFICATE OF SERVICE by plaintiff USA [Date Entered: 07/10/00, By: dm]
07/07/2000	98	Yes: 3 Page(s): 57 KB; F	NOTICE of Sale [Date Entered: 07/07/00, By: sn]
07/06/2000	97	Yes: 2 Page(s): 48 KB; F	Brief & Argument by defendant Lamont D. Hill in support of motion for Relief From Order [96-1] [Date Entered: 07/06/00, By: sn]
07/06/2000	96	Yes: 2 Page(s): 48 KB; F	MOTION for Relief From Order by defendant Lamont D. Hill [Date Entered: 07/06/00, By: sn]
06/23/2000	95	Yes: 2 Page(s): 49 KB;	ORDER by Charles B. Kornmann denying motion to re-open [93-1], denying motion to amend as per Rule 59 FRCP [93-2] (cc:all counsel) [Date Entered: 06/23/00, By: sn]
06/20/2000	94	Yes: 4 Page(s): 127 KB;	AMENDED JUDGMENT OF FORECLOSURE AND DECREE OF SALE in favor of USA and against Lamont D. Hill in the amount of $ 2,235,520.04 by Charles B. Kornmann ; (cc: all counsel, 3 c. copies USCOA) [Date Entered: 06/20/00, By: dm]
06/16/2000	93	Yes: 14 Page(s): 350 KB;	MOTION to re-open, and to amend as per Rule 59 FRCP by defendant Lamont D. Hill [Date Entered: 06/16/00, By: dm]
06/16/2000	93	No	OBJECTIONS by defendant Lamont D. Hill to [92-1] [Date Entered: 06/16/00, By: dm]
06/16/2000	92	Yes: 4 Page(s): 124 KB;	JUDGMENT OF FORECLOSURE AND DECREE OF SALE in favor of USA and against Lamont D. Hill in the amount of $ 2,235,520.04 by Charles B. Kornmann ; granting motion for summary judgment [60-1] (cc: all counsel, US Marshal, 3 c. copiesUSCOA) [Date Entered: 06/16/00, By: dm]
06/12/2000	--	No	NOTIFICATION by Circuit Court of Appellate Docket Number 00-2363SDP [Date Entered: 06/12/00, By: dm]
06/01/2000	91	No	Appraisal Summary Report [Date Entered: 06/01/00, By: dm]
05/24/2000	90	Yes: 2 Page(s): 33 KB;	CERTIFICATE OF SERVICE by plaintiff USA [Date Entered: 05/24/00, By: jH]
05/19/2000	89	Yes: 2 Page(s): 55 KB;	ORDER by Charles B. Kornmann setting aside Order, Document 87 and denying the Hill motion, Document 82, on the merits (cc:all counsel) [Date Entered: 05/19/00, By: jH]

Date Filed	Doc. No.	Image	Description
08/09/2000	107	Yes: 1 Page(s): 28 KB: F	ORDER by Charles B. Kornmann granting motion for Court Order Allowing Distribution of Cash Rent Proceeds [105-1] (cc:all counsel) [Date Entered: 08/09/00, By: jH]
08/07/2000	106	Yes: 2 Page(s): 44 KB: F	CERTIFICATE OF SERVICE by receiver Larry Dean Nelson [Date Entered: 08/07/00, By: jH]
08/07/2000	105	Yes: 2 Page(s): 76 KB: F	MOTION for Court Order Allowing Distribution of Cash Rent Proceeds by receiver Larry Dean Nelson to Secured Creditor, F.S.A. [Date Entered: 08/07/00, By: jH]
07/31/2000	104	Yes: 3 Page(s): 62 KB: F	RESPONSE by plaintiff USA to Motion to Setting Bond [Date Entered: 07/31/00, By: dm]
07/31/2000	103	Yes: 2 Page(s): 37 KB: F	ORDER by Charles B. Kornmann denying motion for an order setting amount of supercedeas bond [101-1] (cc:all counsel) [Date Entered: 07/31/00, By: sn]
07/24/2000	102	Yes: 3 Page(s): 72 KB: F	BRIEF by defendant Lamont D. Hill in support of motion for an order setting amount of supercedeas bond [101-1] [Date Entered: 07/24/00, By: jH]
07/24/2000	101	Yes: 1 Page(s): 30 KB: F	MOTION for an order setting amount of supercedeas bond by defendant Lamont D. Hill [Date Entered: 07/24/00, By: jH]
07/14/2000	100	Yes: 1 Page(s): 29 KB: F	ORDER by Charles B. Kornmann denying motion for Relief From Order [96-1] (cc:all counsel) [Date Entered: 07/14/00, By: jH]

APPENDIX O

[Fold out]

GENERAL DOCKET FOR
Eighth Circuit Court of Appeals

Court of Appeals Docket #: 00-2363 Filed: 6/5/00
United States v. Lamont D. Hill, et al
civil - United States as a party - none
Appeal from: U.S. DISTRICT COURT, SOUTH DAKOTA

- -
Lower court information:

District: 0869-3 : CIV 98-3024
Trial Judge: Charles B. Kornmann, U.S. District Judge
Date Filed: 11/25/98
Date order/judgment: 5/4/00
Date NOA filed: 5/16/00

- -
Fee status: paid

- -
Prior cases:
99-3254 PMB CAB DEM
Date filed: 8/25/99 Date disposed: 10/5/99 Disposition: dism

Current cases:
None

Appendix Item No.
U.S. Supreme Court
Petition for a Writ of
Certiorari to 8 CCA
File No._____

Proceedings include all events.
00-2363 United States v. Lamont D. Hill, et al

- -

Counsel Information

UNITED STATES OF AMERICA Plaintiff - Appellee	Jan Leslie Holmgren 605-330-4402 [COR LD NTC usa] U.S. ATTORNEY'S OFFICE P.O. Box 5073 Sioux Falls, SD 57117-5073 605-330-4395
v.	
LAMONT D. HILL Defendant - Appellant	Lamont D. Hill [NTC pro] 18147 320th Avenue Onida, SD 57564
JANET THOMPSON Defendants	
SHIELD PARTNERSHIP Defendants	
ROSS HILL Defendants	
JODY HILL Defendants	
KENNETH FALKENHAGEN Defendants	
ASMUSSEN GRAIN, INC. Defendants	
ROBERT JOACHIM dba Joachim Brothers Partnership Defendants	
GERALD JOACHIM dba Joachim Brothers Partnership Defendants	
PIONEER HI-BREED INTERNATIONAL, INC. Defendants	
BARBER FARM SERVICE Defendants	

Proceedings include all events.
00-2363 United States v. Lamont D. Hill, et al

KELTGEN SEED COMPANY
Defendants

ABERDEEN ASSOCIATION OF
ORTHOPEDIC SURGEONS
Defendants

SULLY COUNTY, a political
subdivision of the State of
South Dakota
Defendants

LARRY DEAN NELSON
Receiver

Proceedings include all events.
00-2363 United States v. Lamont D. Hill, et al

6/5/00	Civil Case Docketed. Dist. Ct. Office: Pierre, South Dakota (jmb)
6/5/00	CERTIFIED copies notice of appeal, [00-2363] [1274873], of amended notice of appeal, and orders of 4/5/00 and 5/4/00. [00-2363] [1274873] (jmb)
6/5/00	CERTIFIED copies of district court order of 05/19/00 regarding 1. The order (doc. 87) dated 5/3/00 is set aside, 2. The Hill mo. (doc. 82) is denied on the merits, and 3. The U.S. is directed to submit the recent appraisal and a proposed judgment as described. [00-2363] [1274883] (jmb)
6/5/00	MOTION of aplee, USA , to dismiss case [00-2363] [1274893] w/service 5/23/00 (jmb)
6/5/00	RECORDS received: Original File, consisting of 2 Volume(s), Location STP. [00-2363] (jmb)
6/12/00	APPEARANCE for appellee, attorney Jan Leslie Holmgren [00-2363] [1277776] (sjo)
6/19/00	CERTIFIED copies of district court judgment of foreclosure and decree of sale dated 06/16/00 [00-2363] [1280802], of updated docket entries received relfecting the jmt, Hill's objections, and mo. to re-open. [1280802] [00-2363] (jmb)
6/21/00	JUDGMENT: Pasco M. Bowman, C. A. Beam, Diana E. Murphy granting appellee motion to dismiss case on the ground there is not yet a final judgment and the appeal is premature. [1274893-1] [00-2363] [1281655] [00-2363] [00-2363] [1281655] (dms)
6/26/00	CERTIFIED copies receceived from the district court of Amended Judgment of Foreclosure and Decree of Sale dated 06/20/00 . [00-2363] [1286020] (jmb)
7/17/00	CERTIFIED copies of district court order of 07/14/00 regarding 1.) denying Hills' motion for relief from order and 2.) the filing of any additional frivolous motions in this action by Hill will result in the imposition of monetary and possibly other sanctions. [00-2363] [1291158], of updated docket entries received. [1291158] [00-2363] (jmb)
8/16/00	MANDATE ISSUED [00-2363] (dms)
8/24/00	RECEIPT for Mandate. [00-2363] [1304736] (dms)
8/30/00	MOTION of aplnt, Lamont D. Hill, for reconsideration of order (judgment) of June 21, 2000 [00-2363] [1305893], TO COURT. w/service (dms)

Proceedings include all events.
00-2363 United States v. Lamont D. Hill, et al

9/7/00	Requesting St. Paul return records to appropriate district court/agency/attorney as case is now closed. 2 volumes of original file [00-2363] (jjf)
9/8/00	JUDGE ORDER: denying appellant motion for reconsideration [1305893-1] filed by Lamont D. Hill [00-2363] [1308289] :DENIED (dms)
9/8/00	Record Sent out of the office to lower court at the end of appellate proceedings. Records Included: 2 volumes OF; . [00-2363] (cyz)
9/15/00	MOTION of aplnt, Lamont D. Hill, for reconsideration of order of September 8, 2000 [00-2363] [1311611], TO COURT. w/service (dms)
9/26/00	JUDGE ORDER: Appellant's successive motion for reconsideration has been considered by the Court and is denied. The Court will accept no more attempted filings by Mr. Hill with respect to this particular appeal. [1311611-1] [00-2363] [1314616] :DENIED (dms)

BEST AVAILABLE COPY

Supreme Court, U.S.
FILED
APR 11 2001
CLERK

No. 00-1284

In the Supreme Court of the United States

LAMONT D. HILL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether an untimely petition for rehearing in the court of appeals that is denied by that court without comment restarts the period for filing a petition for a writ of certiorari.

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In the Supreme Court of the United States

No. 00-1284

LAMONT D. HILL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The order of the court of appeals dismissing the case (Pet. App. 1a-2a) is unreported. The two orders of the court of appeals denying petitioner's motions for rehearing (Pet. App. 36a-37a) are unreported.[1] The district court's judgment of foreclosure (Pet. App. 20a-25a) is unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 3a-4a) was entered on June 21, 2000. Petitioner filed

[1] The first order denying rehearing, entered on September 8, 2000, is not included in the petitioner's appendix, but was included in a supplemental filing with the Court.

untimely motions for reconsideration in the court of appeals on August, 30, 2000, and September 15, 2000. Those motions were denied on September 8, 2000 and September 26, 2000, respectively. The petition for a writ of certiorari was filed on November 13, 2000. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Rule 40 of the Federal Rules of Appellate Procedure provides that:

> in a civil case, if the United States or its officer or agency is a party, the time within which any party may seek rehearing is 45 days after entry of judgment, unless an order shortens or extends the time.

Rule 13.1 of the Rules of the Supreme Court provides that "a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by * * * a United States court of appeals * * * is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment." Rule 13.3 provides that:

> The time to file a petition for a writ of certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate * * *. But, if a petition for rehearing is timely filed in the lower court by any party, the time to file the petition for a writ of certiorari for all parties * * * runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment.

2. Petitioner Lamont D. Hill borrowed $520,000 from the United States and secured this borrowing with two mortgages delivered to the United States Department of Agriculture, Farm Services Agency. Pet. App. 32a. Petitioner defaulted on these loans, and, on November 25, 1998, the United States filed a complaint seeking foreclosure on the mortgaged property.

On April 5, 2000, the district court issued an order granting the United States' motion for summary judgment. The district court ordered that a "[j]udgment of foreclosure is entered against" the mortgaged property. Pet. App. 33a. The court also ordered the United States, if it was "not willing * * * to bid the full amount of the judgment debt," to "establish by competent proof to the satisfaction of the Court, the fair and reasonable value of the mortgaged premises," and "retain[ed] jurisdiction to enter a further Order determining the fair and reasonable value." 98–3024 Order 8 (Apr. 5, 2000).[2] Pursuant to that order, the United States began the process of obtaining an appraisal of the mortgaged property. See, *e.g.*, Pet. App. 45a, Docket Entry (DE) 79.

Petitioner then filed a "Motion to Open Judgment and Amend the Findings of Fact and Conclusions of Law [under] Rule 59(a)." See Pet. App. 45a, DE 82. On May 2, 2000, before the district court had ruled on that motion, petitioner filed a notice of appeal. Pet. App. 45a, DE 86. On May 18, 2000, the district court rejected the motion for reconsideration and, with regard to the notice of appeal, explained that

> [n]o final judgment of foreclosure has yet been entered and the United States Court of Appeals will

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[2] This portion of the district court's order is not included in petitioner's appendix.

> not consider the appeal until a final judgment has been entered. Pursuant to Rule 4(a)(2) of the Federal Rules of Appellate Procedure, the notice of appeal will be treated as filed ~~when~~ a final judgment is entered.

Pet. App. 27a. The district court ordered the United States to "promptly submit [an] * * * appraisal" of the mortgaged property. *Id.* at 28a. On June 1, 2000, the United States submitted the appraisal.

3. On June 5, 2000, petitioner's appeal to the Eighth Circuit was docketed. The United States moved to dismiss the appeal on the basis that "there has been no final order entered from which the Appellant/Defendant may appeal." U.S. Mot. to Dismiss Appeal 1. The United States explained that the order was not final because the "Court has not determined the value of the real property being foreclosed upon." *Id.* at 2.

On June 16, 2000, the district court entered a "Judgment of Foreclosure and Decree of Sale." Pet. App. 21a; *id.* at 45a, DE 92. The court accepted the government's recently obtained appraisal as the fair market value of the property. Pet. App. 21a. Based on the valuation, the district court ordered that it was "now appropriate to enter a final amended judgment of foreclosure and decree of sale." *Ibid.* The district court entered an "Amended Judgment of Foreclosure and Decree of Sale" four days later, on June 20, 2000. *Id.* at 15a; *id.* at 45a, DE 94.[3]

On June 21, 2000—the day after the district court issued its amended judgment—the court of appeals

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[3] The amended judgment corrected the period for which interest was calculated. Compare Pet. App. 16a (interest calculated "to the date of filing of this amended judgment"), with *id.* at 22a (interest calculated "to the date [of] sale").

granted the government's motion to dismiss petitioner's appeal. Pet. App. 4a. The court of appeals explained that "dismissal of this appeal is granted on the ground there is not yet a final judgment and the appeal is premature." *Ibid.* In its cover letter to petitioner, the court of appeals explained:

> Please review Federal Rules of Appellate Procedure and the Eighth Circuit Rules on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing *must* be received by the clerk's office within the time set by [Federal Rule of Appellate Procedure] 40 in cases where the United States or an officer or agency thereof is a party (within 45 days of entry of judgment). Petitions for rehearing are not afforded a grace period for mailing and are subject to being denied if not timely received.

Id. at 5a.

4. On July 6, 2000, petitioner filed a "Motion for Relief from Order" in the district court under "Rule 60(b)(5) & (6)." Pet. App. 45a, DE 96. In that motion, petitioner acknowledged that the earlier-filed "Notice of Appeal now with the Court has no basis" and contended that the district court erred in concluding that the May 2, 2000 notice of appeal was perfected by the final judgment of foreclosure. Br. in Support of R. 60(b)(5) and (6) Mot. 2. Petitioner also argued that the district court should order that the date for filing a notice of appeal began to run on June 20, 2000, the date of the "Amended Judgment of Foreclosure and Decree of Sale," rather than on June 16, 2000, the date that the court entered the "Judgment of Foreclosure and Decree of Sale." *Id.* at 1-2. On July 14, 2000, the district

court denied this motion, calling it "frivolous." Pet. App. 8a. Referring to the May 2, 2000 notice of appeal dismissed by the court of appeals on June 21, 2000, the district court added that petitioner "has already filed a notice of appeal and his appeal is perfected as of the entry of a final judgment in this action." *Ibid.* The district court ordered that the "filing of any additional frivolous motions in this action by Hill will result in the imposition of monetary and possibly other sanctions." *Ibid.*

5. The time for petitioner to seek rehearing of the court of appeals' June 21, 2000 order dismissing the appeal noticed on May 2, 2000 passed on August 7, 2000. On August 8, 2000, petitioner filed a petition with the court of appeals seeking a stay of any sale of the property. On that same day, the clerk of the court returned the motion for a stay to him, advising him that

> there has not been a notice of appeal filed in the district court concerning this matter. After you have filed a notice of appeal in district court, you may wish to renew the motion for a stay * * *.

Pet. App. 42a. On August 21, 2000, the time to file a notice of appeal from the District Court's June 20, 2000 order passed.

Although these dates had passed, on August 30, 2000, petitioner filed a "Motion for Reconsideration or Rehearing" in the court of appeals. That motion was denied on September 8, 2000 in an order that stated: "Appellant's motion for reconsideration has been considered by the Court and is denied." 00-2363 Order (Sept. 8, 2000). Petitioner filed a second reconsideration motion on September 15, 2000, which the court of appeals denied on September 26, 2000. See Pet. App.

36a ("Appellant's successive motion for reconsideration has been considered by the Court and is denied.").

On November 13, 2000, petitioner filed his petition for a writ of certiorari.

ARGUMENT

This Court lacks jurisdiction to review the court of appeals' June 21, 2000 order dismissing petitioner's appeal because his petition for certiorari is untimely. By failing either to file a petition for certiorari within 90 days of the court of appeals' order dismissing his appeal or to seek a timely rehearing of that order, petitioner lost his opportunity to seek review of that order.

Petitioner's failure to seek timely review of the court of appeals' dismissal is a sufficient basis to dispose of his petition. The case would not merit review, however, even if the petition were timely, because the court of appeals' dismissal was based on case-specific and fact-bound procedural defects, and because the ruling below was correct in any event. The court of appeals dismissed petitioner's appeal because there was no final judgment in the district court when the appeal was taken. Petitioner failed to file a new notice of appeal, timely or otherwise, after the district court entered its June 20, 2000 final order of foreclosure. In short, no question of importance is presented by the petition.

1. Because petitioner failed to seek certiorari within 90 days or file a timely rehearing petition in the court of appeals, this Court lacks jurisdiction to review the court of appeals' June 21, 2000 dismissal order. A petition for certiorari must be filed within ninety days of the court of appeals' entry of judgment. Sup. Ct. R. 13.1; see 28 U.S.C. 2101(c). "[I]f a petition for rehearing is *timely* filed in the lower court," however, the time to file "runs from the date of the denial of the petition

for rehearing." Sup. Ct. R. 13.3 (emphasis added). This Court has recognized that in civil cases (in which the 90-day limit is prescribed by statute), "[t]his 90-day limit is mandatory and jurisdictional. We have no authority to extend the period for filing except as Congress permits." *Missouri* v. *Jenkins*, 495 U.S. 33, 45 (1990).

Here, well over ninety days passed between the date of the court of appeals' original dismissal order (June 21, 2000) and the date petitioner filed his petition for a writ of certiorari (Nov. 13, 2000).[4] Additionally, petitioner did not "timely file[]" (Sup. Ct. R. 13.3) a petition for rehearing in the court of appeals. Accordingly, the petition for a writ of certiorari filed here is jurisdictionally out of time and should not be considered. Sup. Ct. R. 13.3; see *FTC* v. *Minneapolis-Honeywell Regulator Co.*, 344 U.S. 206, 210 (1952).

That the court of appeals later denied petitioner's untimely reconsideration requests without comment does not change this result. See 00-2363 Order (Sept. 8, 2000) ("[a]ppellant's motion for reconsideration has been considered by the Court and is denied"); Pet. App. 36a ("[a]ppellant's successive motion for reconsideration has been considered by the Court and is denied"). To be sure, this Court has "held that when a court considers on its merits an untimely petition for a rehearing * * * the time for appeal may begin to run anew from the date on which the court disposed of the untimely application." *Minneapolis-Honeywell*, 344 U.S. at 210.

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[4] Petitioner appears to rely on the date of the mandate issued by the court of appeals to show that his petition is timely. See Pet. 1. This Court's rules expressly provide, however, that the "time to file a petition for a writ of certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate." Sup. Ct. R. 13.3.

However, there is nothing in the court of appeals' denials here to suggest that it "consider[ed] [petitioner's motions] on [their] merits." *Ibid.* See also *id.* at 211 ("the mere fact that a judgment previously entered has been reentered or revised in an immaterial way does not toll the time within which review must be sought"). Petitioner never filed a motion to extend the period for filing a rehearing petition. Additionally, the record and the appellate rules indicate that the court of appeals would not have considered petitioner's untimely rehearing petition "on its merits" without an order that expressly extended the period for filing. See Fed. R. App. P. 40(a) (the "time within which any party may seek rehearing is 45 days after entry of judgment, *unless an order shortens or extends the time*") (emphasis added); see also Pet. App. 5a (rehearing petitions "are subject to being denied if not timely received").[5]

Petitioner failed to meet this deadline in spite of being specifically instructed as to its importance. When the court of appeals dismissed his appeal, it notified him "that petitions for rehearing *must* be received by the

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[5] In *Pfister* v. *Northern Illinois Finance Corp.*, 317 U.S. 144 (1942), this Court explained that:

> where out of time petitions for rehearing are filed and the referee or court merely considers whether the petition sets out, and the facts—if any are offered—support, grounds for opening the original order and determines that no grounds for a reexamination of the original order are shown, the hearing upon or examination of the grounds for allowing a rehearing does not enlarge the time for review of the original order. This result follows from the well-established rule that where an untimely petition for rehearing is filed which is not entertained or considered on its merits the time to appeal from the original order is not extended.

Id. at 150.

clerk's office within the time set by [Federal Rule of Appellate Procedure] 40 in cases where the United States or an officer or agency thereof is a party (within 45 days of entry of judgment)." Pet. App. 5a (emphasis in original). It further warned him that a late-filed petition was "subject to being denied if not timely received." *Ibid.* In spite of this warning, petitioner failed to file a timely petition for rehearing. Accordingly, this Court lacks jurisdiction to review the court of appeals' dismissal order.

2. a. Moreover, the court of appeals' dismissal of petitioner's prematurely filed appeal was correct, because there was no final judgment in the district court when the notice of appeal was filed. To be sure, the district court may have contributed to petitioner's procedural confusion by twice suggesting that petitioner did not need to file a new notice of appeal and could instead rely on the notice of appeal dismissed by the court of appeals on June 21, 2000. This suggestion may have contributed to petitioner's failure to obtain review of the foreclosure decision.[6] However, petitioner should have relied on the clear directions of the court of appeals to the effect that he needed to refile his notice of appeal to protect his appellate rights. See Pet. App. 42a.[7] Despite this clear direction, petitioner did

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[6] The district court stated in its May 15, 2000 order denying petitioner's motion to open the judgment that pursuant to Rule 4(a)(2), the notice of appeal would "be treated as filed when a final judgment is entered." Pet. App. 27a. Similarly, in its July 14, 2000 order denying petitioner's motion for relief from order, the district court noted that petitioner's "appeal is perfected as of the entry of a final judgment in this action." *Id.* at 8a.

[7] The government's appellate brief also put petitioner on notice of the procedural deficiencies of his appeal. The government, in its submission to the court of appeals, suggested that there was no

not attempt to resolve the question of the continuing viability of his notice of appeal – he neither sought timely rehearing of the court of appeals' order dismissing the appeal nor filed a new notice of appeal from the district court's final judgment entered on June 20, 2000.[8]

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effective notice of appeal as to the order entering final judgment. See Response of the U.S. to Appellant's Mot. for an Order Granting a Temporary Stay 1 (received by the court of appeals on Aug. 7, 2000) ("As far as the United States is aware, there is no pending appeal with this court.").

[8] Neither the premature appeal nor the premature Rule 59 motion affected the validity of the district court's June 20, 2000 final judgment. Although as a general rule the filing of a notice of appeal divests the district court of jurisdiction, an attempted notice of appeal from a nonfinal judgment will not divest the district court of jurisdiction, and thus the district court retained jurisdiction to enter the final judgment. See *SEC* v. *American Bd. of Trade, Inc.*, 829 F.2d 341 (2d Cir. 1987), cert. denied, 486 U.S. 1034 (1988); *Doucet* v. *Gulf Oil Corp.*, 783 F.2d 518, 526 (5th Cir.), cert. denied, 479 U.S. 883 (1986).

Additionally, petitioner interposed his "Motion to Open Judgment and Amend Findings of Fact and Conclusions of Law [under Federal Rule of Civil Procedure] 59(a)" between the order he attempted to appeal and his notice of appeal. See Pet. App. 45a, DE 82. Federal Rule of Appellate Procedure 4(a)(4) provides that when a party files a timely motion for a new trial under Rule 59(a), the "time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion." Fed. R. App. P. 4(a)(4). The district court, after first declaring the motion mooted by the notice of appeal, Pet. App. 27a, later determined that the notice of appeal did not moot the motion, considered the motion on the merits, and rejected it, stating that "this matter should proceed to judgment and the Hill motion should be denied," *id.* at 28a. The court denied this motion before it entered final judgment, and thus the motion had no effect on the final judgment subsequently entered or the deadline for filing a notice of appeal under Federal Rule of Appellate Procedure 4(a)(4).

Indeed, this is not a situation where later actions could save a premature notice of appeal. Here, the prematurity of petitioner's notice of appeal was fatal. Federal Rule of Appellate Procedure 4(a)(2) provides that "[a] notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry." However, this Court has clarified that a prematurely filed notice of appeal ripens "only when a district court announces a decision that *would be* appealable if immediately followed by the entry of judgment." *FirsTier Mortgage Co.* v. *Investors Mortgage Ins. Co.*, 498 U.S. 269, 276 (1991).

Here, the grant of summary judgment issued by the district court on April 5, 2000 would not have been appealable even if accompanied by the entry of judgment. The fair market valuation of the property, which is a necessary step before the entry of judgment, had yet to be determined. Cf. *United States* v. *Fitzgerald*, 109 F.3d 1339, 1342 (8th Cir. 1997) (foreclosure order is immediately appealable when "the value * * * of [debtor's] interest was * * * fully resolved" by the district court). Accordingly, the district court ordered that the government "shall establish by competent proof to the satisfaction of the Court, the fair and reasonable value of the mortgaged premises at this time and the Court retains jurisdiction to enter a further Order determining the fair and reasonable value." 98-3024 Order 8 (Apr. 5, 2000); see U.S. Mot. to Dismiss 1-2 ("there has been no final order entered" because the "Court ha[d] not determined the value of the real property being foreclosed"). Because the fair market value had not been determined, the April 5, 2000 ruling did not "announce a decision purporting to dispose of all

of [the government's] claims." *FirsTier*, 498 U.S. at 277.[9]

b. In sum, even if this Court had jurisdiction to grant review, the procedural issues in this case would present no issue worthy of consideration on the merits. This case is a procedural muddle. The district court, apparently aware of the petitioner's litigation history, may have contributed to the muddle. However, this is a unique situation that is unlikely to recur. The issues petitioner seeks to present involve only factbound and case-specific applications of clearly established procedural rules. Accordingly, those issues would not warrant this Court's review.

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[9] Moreover, petitioner could not have "reasonably but mistakenly believe[d] [the decision] to be a final judgment" (*FirsTier*, 498 U.S. at 276), because the district court specified in its May 15, 2000 order denying petitioner's motion to open the judgment that "[n]o final judgment of foreclosure has yet been entered and the United States Court of Appeals will not consider the appeal until a final judgment has been entered." Pet. App. 27a. Additionally, because the dismissal was correct, it would have been inappropriate for the government to "alert the Circuit Court * * * that [its] Motion [for dismissal of petitioner's earlier appeal] had no merit and had been 'mooted.'" Pet. 11.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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APRIL 2001